

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Criminal Appeal No.412 of 2016 and
Crl.M.P.No.6215 of 2016

Govindaraj Appellant/Accused

-Vs-

State Rep. by
The Inspector of Police
All Women Police Station (West)
Coimbatore District. Respondent/Complainant

This Criminal Appeal has been preferred to set aside the conviction and sentence imposed by judgment dated 10.04.2015 made in Sp.C.C.No.37 of 2014 on the file of the Sessions Judge, Magalir Court (Fast Track) Coimbatore.

For Appellant : Mr.S.Ravichandran

For Respondent : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the first accused in SP1.C.C.No.37 of 2014 on the file of the Sessions Judge, Magalir Court (Fast Track), Coimbatore. He stood charged for offences under Section 376 IPC r/w Section 3(a) r/w Section 4 of Protection of Children from Sexual Offences, Act, 2012 (for short POCSO Act) (2 counts). The second accused is one Mr.Saravanan, who stood charged for offences under Sections 366, 376 IPC r/w Section 3(a) r/w Section 4 of the POCSO Act. By judgment dated 10.04.2015, the Trial Court acquitted the second accused, however, convicted the first accused/appellant herein under Section 376 IPC r/w Sections 3 and 4 of the POCSO Act (2 counts) and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- for each count (no default sentenced was imposed). The Trial Court directed that the sentences should run concurrently. The Trial Court has also ordered for payment of Rs.1 lakh as compensation to P.W.3. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:-

P.W.2, aged about 17 was born to one Mr.Sivakumar and Mrs.Sharmila (P.W.1). On account of a misunderstanding with Sivakumar, Mrs.Sharmila came out of the matrimonial home and started living with the first accused herein accepting him as her husband. P.W.3, aged about 12 years was born to the appellant/first accused and Mrs.Sharmila out of the said relationship. Thus, the first accused and P.W.1 were living as husband and wife at Door No.8/248, Rakiannan Koil Street, Kurumpalayam, Madhukkarai, Coimbatore along with P.Ws.2 and 3. In due course of time, the first accused developed illicit relationship with another woman viz., Revathi. He started to take liquor and quarreled with P.W.1 in an inebriated condition. Hence, P.W.1 went to her parental home. The first accused refused to send P.Ws.2 and 3 along with her. It is further alleged that in a drunken state, on few occasions, the first accused used to drive the said Revathi and P.W.3 out of the house and keeping himself alone with P.W.2 used to undress her and then to have sexual intercourse with her, against her consent. This sexual harassment, according to P.W.2 went on for five years. P.W.2 was bearing this torture finding no option to escape from the house. When she was doing 10th standard, on account of the above relationship, she became pregnant. The first accused gave her some tablets and as a result, P.W.2 suffered abortion. The first accused kept P.W.2 in constant threat and he warned that he would do away with her in the event she informed the same to others including P.W.1. P.W.2 as a result of the above tortures could not concentrate in her studies. Later on, on one day, the second accused, who is a relative of the first accused came to her house. P.W.2. informed him about the above sexual tortures suffered by her. In an attempt to save her from the torture, he took her to Madurai and from there to Somanur. He made her to stay at the house of one Rajesh. On 24.12.2013, in a temple at Somanur, he tied thali around her neck indicating that there was marriage. Thereafter, on the same day, he had sexual intercourse with P.W.2. Subsequently, she heard that the first accused had started sexually exploiting P.W.3. P.W.3 told about the same to P.W.2. P.W.2 became emboldened this time. She questioned the first accused. But the first accused attacked her and pushed her out of the house. On returning to Somanur, she informed the sexual assault made on P.W.3 by the first accused to Saravanan.

3. In the mean while, on 26.12.2013, the first accused/appellant made a complaint to B8 VH Road Police Station in Coimbatore about the missing of P.W.2. P.W.9, the then Sub-Inspector of Police on receipt of the said complaint registered a case in Crime No.2064 of 2013 for girl missing. Ex.P14 is the complaint and Ex.P15 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate on 27.12.2013 at 10.00 a.m.

4. P.W.10, the then Inspector of Police took up the case for investigation. She went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. She examined P.Ws.1 to 3 and recorded their statements. He arrested the first accused at 9.30 p.m. on 29.12.2013. She forwarded P.Ws.2 and 3 as well as the first accused for medical examination. The report revealed that P.Ws.2 and 3 had been sexually exploited. The medical report further revealed that the first accused was sexually matured to perform penal sexual intercourse with women. Then, she forwarded the accused to the Court for judicial remand. At her request, the learned Judicial Magistrate recorded the statements of P.Ws.1 to 3 under Section 164 Cr.P.C. She handed over the case diary to P.W.11, her successor. P.W.11 made a request to the Court to send material objects including dress materials of the victims for examination. On completing the investigation, she laid charge sheet against both the accused.

5. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 22 documents were exhibited. However, no Material Objects were marked.

6. Out of the said witnesses, P.W.1 is the mother of P.Ws.2 and 3. She has stated that P.Ws.2 and 3 told her about the penetrative sexual assault committed by the first accused. P.Ws.2 and 3 have stated about the entire occurrence that the first accused on several occasions had sexual intercourse with them. P.W.4 - Dr.Murugalakshmi has stated that on 30.12.2013, she examined P.W.2. P.W.2 told her that she was subjected to sexual intercourse for about five years and twice she became pregnant. P.W.4 on examination found that there were no external injuries. But hymen in her vagina was found ruptured and allowed one finger to move freely. From these symptoms, she gave opinion that she would have undergone sexual intercourse with a man. On the same day, she examined P.W.3. She told that for about one month, she was sexually assaulted by the accused. On examination, she found that there were no external injuries. But her hymen was found ruptured and vagina allowed one finger to move freely. From these symptoms, she gave opinion that P.W.3 had also undergone sexual intercourse with a man. P.W.5 - Dr.Jayasingh has stated that he examined the first accused on 03.01.2014. On examination, he found that the first accused was capable of having sexual intercourse with women. P.W.6 was the Headmistress of the School, where P.W.2 was studying. She has stated that as per school records, her date of birth is 15.11.1996. Exs.P5 and P6 are the certificates showing her date of birth. P.W.7 was the Headmistress of the Government High School at Puravipalayam where P.W.3 was studying. According to her, the date of birth of P.W.3 as per the school records is

18.03.2002. Exs.P7 and P8 are the certificates showing her date of birth. P.W.8 has spoken about the arrest of the first accused. P.W.9 has spoken about the registration of the case. P.Ws.10 and 11 have spoken about the investigation done and final report filed.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor marked any document on their side. Their defence was a total denial.

8. Having considered all the above materials, the trial Court convicted the first accused/appellant herein alone as detailed in the first paragraph of this judgment and that is how the appellant is before this Court with this Criminal Appeal.

9. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

10. The learned counsel for the appellant would submit that there was some misunderstanding between P.W.1 and the first accused and at the instigation of P.W.1, P.Ws.2 and 3 have made false allegation against the appellant. Therefore, according to the learned counsel, the evidences of P.Ws.1 to 3 should be rejected. We find no force at all in the said argument. It is well settled that if the evidences of the prosecutors gains fullest confidence of the Court, there is no need to look for any corroboration from any other sources. In this case, P.Ws.2 and 3 are young children, who fall within the definition of child as made in the POCSO Act. This fact has been clearly established by the school certificates issued by P.Ws.6 and 7. Under Section 29 of the POCSO Act, based on the evidences of P.Ws.2 and 3, we have to necessarily raise a presumption that the first accused is the perpetrator of the crime.

11. Of course, the said presumption is rebuttable, but, absolutely, there is no material on record either direct or circumstantial to rebut the said presumption against the first accused. Since P.Ws.2 and 3 are young children, whose evidence is also fully corroborated by the medical evidence, we do not find any reason to doubt their credibility. P.W.4 - Dr. Murugalakshmi, who examined P.Ws.2 and 3 has given finding that she found rupture in the hymen and the vagina of P.Ws.2 and 3 and they allowed one finger to move freely. Thus, from the medical evidence, it has been clearly established that P.Ws.2 and 3 have been subjected to sexual intercourse. Had it been true that P.Ws.2 and 3 were sexually assaulted by some one else other than the first accused, there is no need for P.Ws.2 and 3 to omit him and to implicate the first accused falsely in the case. Thus, in our considered view, the

evidences of P.Ws.2 and 3, coupled with the medical evidence and that of the evidence of P.W.1, would clearly go to prove that this accused has committed aggravated penetrative sexual assault. But unfortunately, the Trial Court had framed charges only for the penetrative sexual assault punishable under Section 4 of the POCSO Act. Since the punishment imposed by the Trial Court is also only for offence under Section 4 of the said Act, we are unable to punish the accused for aggravated penetrative sexual assault. We find that the conviction of the accused under 376 IPC r/w Sections 3 and 4 of the POCSO Act (2 counts) needs to be sustained, which does not require any interference at the hands of this Court.

12. Now turning to the quantum of punishment, the learned counsel for the appellant would submit that the accused is aged about 37 years and there are lot of chances for reformation. He has also got no bad antecedents. For these mitigating circumstances, according to the learned counsel, the quantum of punishment may be reduced. We find no substance at all in the said submission made by the learned counsel. Here is a case where the appellant/accused has exhibited animal behaviour in forcing the two young children, who are step daughters to undergo the ordeal of penetrative sexual assault repeatedly and to the extent of one becoming pregnant even twice. This kind of heinous crime cannot be viewed lightly. Though, there are certain criticisms about the deterrent theory of punishment, without going into the same, we are of the view that in the instant case, sustaining the sentence of imprisonment of life imposed on the accused would be a deterrence for those who have got even a semblance of thinking of exploiting the female children sexually. Thus, we do not find any merit at all in this appeal.

13. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. It is reported that the appellant is in jail. The appellant is directed to undergo the remaining period of sentence as imposed by the trial Court.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Sessions Judge, Magalir Court (FAST TRACK)
Coimbatore.

2.-do- Principal Sessions Judge,
Coimbatore.

3.The Inspector of Police
All Women Police Station (West)
Coimbatore District.

4.The Superintendent,
Central Prison, Coimbatore.

5.The District Collector, Coimbatore.

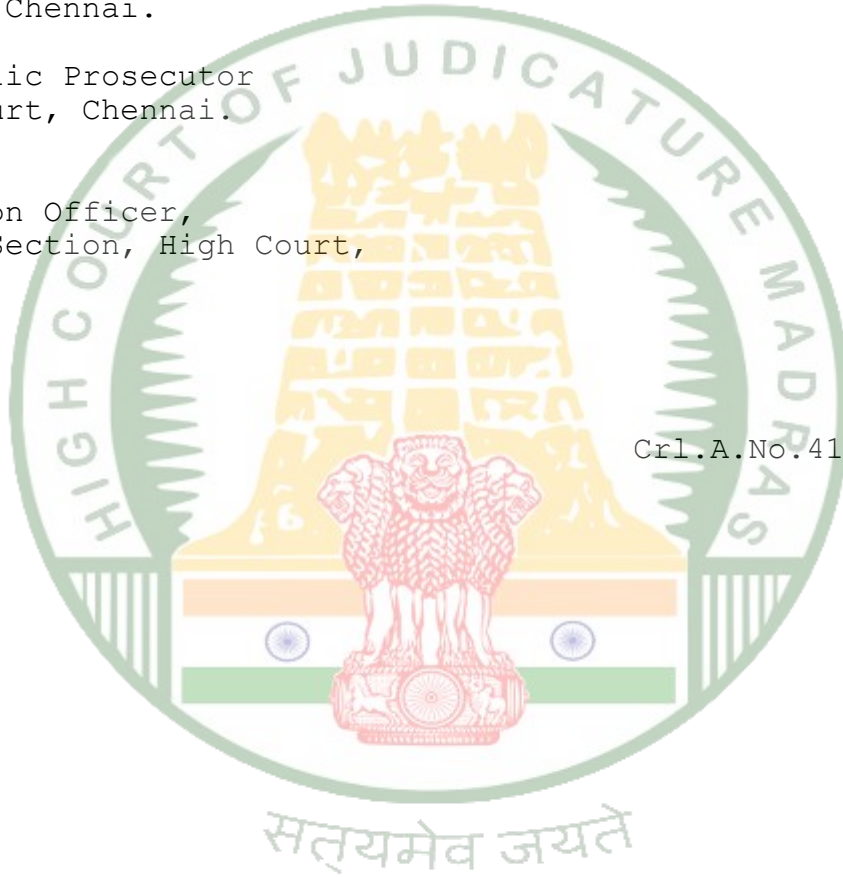
6.The Director General of Police,
Mylapore, Chennai.

7.The Public Prosecutor
High Court, Chennai.

Copy to:
The Section Officer,
Criminal Section, High Court,
Madras.

rsy(co)
krd 29/9

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